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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 3M COMPANY, Plaintiff,

11 vs.

12 AIME LLC, MARK BACIAK, AND
MICHAEL BINGHAM,

13 Defendants.

15 AIME LLC, MARK BACIAK, AND
MICHAEL BINGHAM,

16 Third-Party Plaintiffs,

17 vs.

18 JOHN SHINAR (Individually and in
His Capacity as Agent of 3M
COMPANY),

21 Third-Party Defendant

CASE NO. 2:20-cv-01096-RAJ

**AIME'S AMENDED MOTION
FOR AN ORDER OVERRULING
3M'S OBJECTIONS AND
COMPELLING 3M'S RESPONSE
TO AIME'S FIRST REQUEST
FOR PRODUCTION OF
DOCUMENTS**

I. RELIEF REQUESTED

Defendants AIME LLC, Mark Baciak, and Michael Bingham (hereinafter, "AIME"), hereby file their Motion for an Order overruling 3M's objections to AIME's First Request for Production of Documents and compelling 3M to produce documents in response, as set forth in more detail below.

II. INTRODUCTORY STATEMENT

3M filed this lawsuit against AIME after it discovered AIME was competing with 3M for the business of one of its customers known as Providence Medical. 3M's Initial Disclosures reveal that the sole basis for its lawsuit against AIME was a single instance of AIME attempting to broker genuine 3M 1860 respirators to Providence. A licensed attorney had sworn out an affidavit attesting to the existence and availability of such masks. Upon learning of AIME's talks with Providence, 3M told AIME that such a quantity of masks did not exist. 3M claims AIME was trying to broker 500 million masks, when in fact the number was only 1 million masks.

When 3M sought the identity of the seller, AIME disclosed that information. Twice, AIME offered to “work with 3M” to “quickly resolve this matter” and sought to work directly with 3M to provide further information about the seller in question. 3M never followed up with AIME. Instead, 3M filed a 60-page lawsuit accusing AIME of engaging in, *inter alia*, counterfeiting, price gouging, and profiteering. 3M’s suit called AIME’s principals “bad actors,” “opportunists, and claimed they were “perpetrating a false and deceptive scheme on unwitting customers.” The suit implied AIME’s principals were criminals. AIME reacted by filing a Counterclaim for malicious prosecution, among other claims. AIME’s Counterclaim asserts that this and many other “cookie-cutter” suits filed by 3M around the nation against small business owners was simply part of 3M’s damage control campaign after its own reputation had been sullied when the president of the United States had invoked the Defense Production Act against 3M and accused it of being unpatriotic.

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1 AIME's Counterclaim makes extensive allegations tending to show that 3M executives
 2 and insiders are selling mass quantities of PPE outside normal distribution channels at market
 3 prices well above list price to personally enrich themselves. It further alleges 3M is selling to
 4 non-U.S. based entities to maximize its profit, when it could be selling to the U.S. market during
 5 a pandemic. AIME claims 3M significantly understated its global production capacity to misled
 6 the American public into thinking it was doing its best, when in fact, its overseas production
 7 greatly exceeds 3M's asserted capacity.

8 **III. DISPUTED OBJECTION TO AIME'S DISCOVERY REQUESTS**

9 AIME's First Request for Production of Documents seeks 82 categories of documents, all
 10 tailored to obtain documents relating to allegations made by AIME in its Counter-Complaint or
 11 by 3M in its Complaint. 3M's Responses were served on January 14, 2021 without producing a
 12 single document. For over a year, 3M still has produced no documents in response to AIME's
 13 First Request for Production, apparently based in part on the following reasoning:

14 Currently, a motion to dismiss Defendants' counterclaims is pending with this
 15 Court. 3M asserts that none of Defendants' counterclaims are viable. Based on
 16 recent communications, it appears that Defendants intend to further amend their
 17 counterclaims. 3M will not produce documents related to counterclaims that are
 18 likely to be dismissed or change because doing so would be costly and would be a
 19 waste of resources and therefore disproportionate to the needs of the litigation.

20 **IV. AIME'S REQUESTS, 3M'S RESPONSES, AND AIME'S ARGUMENTS**

21 Those Requests for which AIME seeks to overrule 3M's objections and to compel the
 22 production of responsive documents are set forth below, along with 3M's Response and AIME's
 23 respective Motion to Compel.

24 **REQUEST NO. 1.** All documents Plaintiff relied upon in making the decision
 25 to file this lawsuit.

26 **RESPONSE:** 3M objects to this request to the extent that it seeks either attorney-

1 client privileged or work-product privileged material. Without waiving any objections,
2 3M relied on the customers' complaints and related documents provided in with its
3 initial disclosures. 3M also relied on AIME's website, but 3M does not possess copies
4 of the original website screen shots.

5 **MOTION TO COMPEL:** AIME has sued in part for malicious prosecution,
6 claiming 3M's lawsuit lacked probable cause to accuse the Counterclaim Plaintiffs of being
7 "bad actors" engaged in "unlawful actions", and to claim they were "perpetrating a false
8 and deceptive scheme on unwitting customers." Counterclaim Plaintiffs seek to establish a
9 lack of probable cause to be sued for "fraud", "counterfeiting", and "price gouging." 3M
10 produced no documents whatsoever in response to this Request, instead alluding to certain
11 documents "provided in with its initial disclosures."

12 "[I]t is not an appropriate response to a request for production of documents to state that
13 the documents were previously produced. The responding party must provide specific
14 identification of the documents corresponding to the specific request." *Sundance Image*
15 *Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278*, at *5 (S.D. Cal. Aug. 19, 2005).

16 By making a blanket assertion of attorney client privileged communications and attorney
17 work product without producing a privilege log, the Counterclaim Defendant has violated
18 Rule 26(b)(5), Federal Rules of Civil Procedure. "[A privilege log] would have enabled the
19 plaintiff to assess the applicability of any asserted privileges. See, *Heath v. F/V ZOLOTOI*,
20 221 F.R.D. 545, 552 (W.D. Wash. 2004). "[I]t is not an appropriate response to a request for
21 production of documents to state that the documents were previously produced. The
22 responding party must provide specific identification of the documents corresponding to
23 the specific request." *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd., No. WL*
24 *8173278*, at *5 (S.D. Cal. Aug. 19, 2005).

25 **REQUEST NO. 2.** All documents relating to any of the Defendants that were in
26 Plaintiff's possession, custody or control as of the date Plaintiff filed this lawsuit.

27 **RESPONSE:** 3M objects to this request to the extent that it seeks either
28 attorney-client privileged or work-product privileged material. Without waiving
29 any objections, 3M relied on the customers' complaints provided in with its initial
30 disclosures. Additionally, 3M will perform a targeted, reasonable search of its
31 electronic files for additional material once a protective order is entered.

32 **MOTION TO COMPEL: AIME has sued in part for malicious prosecution, claiming 3M's**

33 **AIME'S AMENDED MOTION FOR AN ORDER**
34 **OVERRULING 3M'S OBJECTIONS AND**
35 **COMPELLING 3M'S RESPONSE TO AIME'S FIRST**
36 **REQUEST FOR PRODUCTION OF DOCUMENTS**
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lawsuit lacked probable cause. Having copies of the documents relating to any of the Defendants that were in Plaintiff's possession, custody or control as of the date Plaintiff filed this lawsuit is essential to demonstrating lack of probable cause and is calculated to lead to the discovery of admissible evidence.

By making a blanket assertion of attorney client privileged communications and attorney work product without producing a privilege log, the Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

"[I]t is not an appropriate response to a request for production of documents to state that the documents were previously produced. The responding party must provide specific identification of the documents corresponding to the specific request." *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

3M asserts that "3M will perform a targeted, reasonable search of its electronic files for additional material once a protective order is entered." Besides having not filed a Motion for Protective Order, this response belies 3M's suggestion that the requested documents are in any way privileged.

REQUEST NO. 5. Any and all documents supporting Plaintiff's allegation in paragraph 2 of the Complaint that "Defendants seek to benefit from 3M's good reputation to dupe unsuspecting individuals and healthcare entities to pay money for 3M's N95 respirators."

RESPONSE: 3M objects to this request to the extent that it seeks either attorney-client privileged or work-product privileged material. Without waiving any objections, see documents included with the initial disclosures. Discovery is ongoing. Additional material will be provided when available.

MOTION TO COMPEL: By making a blanket assertion of attorney client privileged communications and attorney work product without producing a privilege log, the Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

"[I]t is not an appropriate response to a request for production of documents to state that the documents were previously produced. The responding party must provide specific identification of the documents corresponding to the specific request." *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

REQUEST NO. 6. Any and all documents supporting Plaintiff's allegation in

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1 Paragraph 2 of the Complaint that “Defendants’ motivation is to profiteer from
2 our national crisis.”

3 **RESPONSE:** 3M objects to this request to the extent that it seeks either
4 attorney-client privileged or work-product privileged material. 3M also objects to
5 the extent that the documents at issue are in the possession or control of third
6 parties, including but not limited to governmental entities. Without waiving any
7 objections, see documents included with the initial disclosures. Discovery is
ongoing. Additional material will be provided when available.

8 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged
9 communications and attorney work product without producing a privilege log, the
10 Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

11 “[I]t is not an appropriate response to a request for production of documents to state that
12 the documents were previously produced. The responding party must provide specific
13 identification of the documents corresponding to the specific request.” *Sundance Image
14 Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

16 **REQUEST NO. 7.** Any and all documents supporting Plaintiff’s allegation in
17 Paragraph 2 of the Complaint that “Defendants have repeatedly claimed false
affiliations with 3M.”

19 **RESPONSE:** 3M objects to this request to the extent that it seeks either
20 attorney-client privileged or work-product privileged material. 3M also objects to
21 the extent that the document at issue are in the possession or control of third parties,
22 including but not limited to governmental entities. Without waiving any
23 objections, see documents included with the initial disclosures. Discovery is
24 ongoing. Additional material will be provided when available.

25 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**

26 AIME’S AMENDED MOTION FOR AN ORDER
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1 **communications and attorney work product without producing a privilege log, the**
2 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

3 “[I]t is not an appropriate response to a request for production of documents to state that
4 the documents were previously produced. The responding party must provide specific
5 identification of the documents corresponding to the specific request.” *Sundance Image*
6 Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

7 **REQUEST NO. 8.** Any and all documents that constitute “reports” as that term is
8 used in Paragraph 3 of the Complaint.

9 **RESPONSE: 3M** objects to this request to the extent that it seeks either
10 attorney-client privileged or work-product privileged material. 3M also objects to
11 the extent that the documents at issue are in the possession or control of third
12 parties, including but not limited to governmental entities. Without waiving any
13 objections, see documents included with the initial disclosures. Discovery is
14 ongoing. Additional material will be provided when available.

15 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
16 **communications and attorney work product without producing a privilege log, the**
17 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

18 “[I]t is not an appropriate response to a request for production of documents to state that
19 the documents were previously produced. The responding party must provide specific
20 identification of the documents corresponding to the specific request.” *Sundance Image*
21 Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

22 **REQUEST NO. 9.** Any and all documents reflecting customers that became
23 confused, expressed concern or contacted 3M as alleged in paragraph 4 of the
24 Complaint.

25 **RESPONSE: 3M** objects to this request to the extent that it seeks either
26 attorney-client privileged or work-product privileged material. 3M also objects to
27 the extent that the documents at issue are in the possession or control of third
28 parties, including but not limited to governmental entities. Without waiving any
29 objections, see documents included with the initial disclosures. Discovery is

1 ongoing. Additional material will be provided when available.

2 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
3 **communications and attorney work product without producing a privilege log, the**
4 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

5 “[I]t is not an appropriate response to a request for production of documents to state that
6 the documents were previously produced. The responding party must provide specific
7 identification of the documents corresponding to the specific request.” *Sundance Image*
Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

8 **REQUEST NO. 10.** Any all documents concerning the investigation by 3M as
9 alleged in paragraph 4 of the Complaint.

10 **RESPONSE:** 3M objects to this request to the extent that it seeks either
11 attorney-client privileged or work-product privileged material. Without waiving
12 any objections, see documents included with the initial disclosures. Discovery is
ongoing. Additional material will be provided when available.

13 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
14 **communications and attorney work product without producing a privilege log, the**
15 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

16 “[I]t is not an appropriate response to a request for production of documents to state that
17 the documents were previously produced. The responding party must provide specific
18 identification of the documents corresponding to the specific request.” *Sundance Image*
Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

19 **REQUEST NO. 11.** Any and all documents concerning the marketing with a
20 direct access and close relationship with 3M as alleged in paragraph 5 of the
21 Complaint.

22 **RESPONSE:** 3M objects to this request to the extent that it seeks either
23 attorney-client privileged or work-product privileged material. 3M also objects
24 to this request as the phrase “concerning the marketing with a direct access and
25 close relationship with 3M” is unclear in the context of the request. Without
26 waiving any objections, see documents included with the initial disclosures.

1 Discovery is ongoing. Additional material will be provided when available.

2 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
3 **communications and attorney work product without producing a privilege log, the**
4 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

5 “[I]t is not an appropriate response to a request for production of documents to state that
6 the documents were previously produced. The responding party must provide specific
7 identification of the documents corresponding to the specific request.” Sundance Image
Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

8 **REQUEST NO. 13.** Any and all documents reflecting that “Defendants
9 have sought millions of dollars of payments from their potential victims” as
10 alleged in paragraph 5 of the Complaint.

11 **RESPONSE:** 3M objects to this request to the extent that it seeks either
12 attorney-client privileged or work-product privileged material. Without waiving
13 any objections, see documents included with the initial disclosures. Discovery is
ongoing. Additional material will be provided when available.

14 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
15 **communications and attorney work product without producing a privilege log, the**
16 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

17 “[I]t is not an appropriate response to a request for production of documents to state that
18 the documents were previously produced. The responding party must provide specific
19 identification of the documents corresponding to the specific request.” Sundance Image
Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

20 **REQUEST NO. 14.** Any and all documents reflecting the “misleading
21 paperwork that misrepresented **the** purchase process” as alleged in paragraph 5 of
22 the Complaint.

23 **RESPONSE:** 3M objects to this request to the extent that it seeks either
24 attorney-client privileged or work-product privileged material. Without waiving
25 any objections, see documents included with the initial disclosures. Discovery is
ongoing. Additional material will be provided when available.

1 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
2 **communications and attorney work product without producing a privilege log, the**
3 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

4 “[I]t is not an appropriate response to a request for production of documents to state that
5 the documents were previously produced. The responding party must provide specific
6 identification of the documents corresponding to the specific request.” *Sundance Image*
7 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

8 **REQUEST NO. 15.** Any and all documents that evidence that any Defendants
9 “falsely claimed 3M was involved in the transaction” as alleged in paragraph 5 of
10 the Complaint.

11 **RESPONSE:** 3M objects to this request to the extent that it seeks either
12 attorney-client privileged or work-product privileged material. Without waiving
13 any objections, see documents included with the initial disclosures. Discovery is
14 ongoing. Additional material will be provided when available.

15 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
16 **communications and attorney work product without producing a privilege log, the**
17 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

18 “[I]t is not an appropriate response to a request for production of documents to state that
19 the documents were previously produced. The responding party must provide specific
20 identification of the documents corresponding to the specific request.” *Sundance Image*
21 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

22 **REQUEST NO. 16.** Any and all documents concerning “the transaction” as
23 defined in Paragraph 5 of the Complaint.

24 **RESPONSE:** 3M objects to this request to the extent that it seeks either
25 attorney-client privileged or work-product privileged material. Without waiving
26 any objections, see documents included with the initial disclosures. Discovery is
 ongoing. Additional material will be provided when available.

1 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
2 **communications and attorney work product without producing a privilege log, the**
3 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

4 “[I]t is not an appropriate response to a request for production of documents to state that
5 the documents were previously produced. The responding party must provide specific
6 identification of the documents corresponding to the specific request.” *Sundance Image*
7 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

8 **REQUEST NO. 17.** Any all documents concerning or evidencing “when 3M
9 approached Defendants **regarding** its concerns” as alleged in paragraph 5 of the
10 Complaint.

11 **RESPONSE:** 3M objects to this request to the extent that it seeks either
12 attorney-client privileged or **work**-product privileged material. Without waiving
13 any objections, see documents included with the initial disclosures. Discovery is
14 ongoing. Additional material will be provided when available.

15 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
16 **communications and attorney work product without producing a privilege log, the**
17 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

18 “[I]t is not an appropriate response to a request for production of documents to state that
19 the documents were previously produced. The responding party must provide specific
20 identification of the documents corresponding to the specific request.” *Sundance Image*
21 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

22 **REQUEST NO. 18.** Any and all documents concerning or evidencing
23 “Defendants brazenly reiterated their false claims to 3M employees” as alleged
24 in paragraph 5 of the Complaint.

25 **RESPONSE:** 3M objects to this request to the extent that it seeks either
26 attorney-client privileged or **work**-product privileged material. Without waiving
any objections, see documents included with the initial disclosures. Discovery is
ongoing. Additional material will be provided when available.

27 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**

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1 **communications and attorney work product without producing a privilege log, the**
2 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

3 “[I]t is not an appropriate response to a request for production of documents to state that
4 the documents were previously produced. The responding party must provide specific
5 identification of the documents corresponding to the specific request.” *Sundance Image*
6 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

7 **REQUEST NO. 19.** Any and all documents concerning or evidencing
8 Defendants “continued to make false representations” as alleged in paragraph 5 of
9 the Complaint.

10 **RESPONSE:** 3M objects to this request to the extent that it seeks either
11 attorney-client privileged or work-product privileged material. Without waiving
12 any objections, see documents included with the initial disclosures. Discovery is
13 ongoing. Additional material will be provided when available.

14 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
15 **communications and attorney work product without producing a privilege log, the**
16 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

17 “[I]t is not an appropriate response to a request for production of documents to state that
18 the documents were previously produced. The responding party must provide specific
19 identification of the documents corresponding to the specific request.” *Sundance Image*
20 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

21 **REQUEST NO. 20.** Any and all documents concerning or evidencing that
22 “Defendants have illegally used 3M’s trademarks in violation of the Lanham
23 Act in order to enrich themselves” as alleged in paragraph 7 of the Complaint.

24 **RESPONSE:** 3M objects to this request to the extent that it seeks either
25 attorney-client privileged or work-product privileged material. Without waiving
26 any objections, see documents included with the initial disclosures. Discovery is
 ongoing. Additional material will be provided when available.

27 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
28 **communications and attorney work product without producing a privilege log, the**

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1 Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

2 “[I]t is not an appropriate response to a request for production of documents to state that
3 the documents were previously produced. The responding party must provide specific
4 identification of the documents corresponding to the specific request.” *Sundance Image*
Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

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6 **REQUEST NO. 22.** Any and all documents which evidence price gouging as
7 alleged in Paragraph 8 of the Complaint.

8 **RESPONSE:** 3M objects to this request to the extent that it seeks either
9 attorney-client privileged or work-product privileged material. Without waiving
10 any objections, see documents included with the initial disclosures. Discovery is
ongoing. Additional material will be provided when available.

11

12 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
communications and attorney work product without producing a privilege log, the
Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

13 “[I]t is not an appropriate response to a request for production of documents to state that
the documents were previously produced. The responding party must provide specific
identification of the documents corresponding to the specific request.” *Sundance Image*
Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

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15 **REQUEST NO. 23.** Any and all documents evidencing 3M’s global production
rate of 3M- brand respirators as alleged in paragraph 10 of the Complaint.

16 **RESPONSE:** 3M objects to this request as overly broad, unduly
burdensome, and disproportionate to the needs of the case. 3M’s N95
production is well-publicized and documents reflecting that production have
been provided in this case. In fact, AIME notes it on its website:

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26 <https://www.aimeusa.com/legal/legal>. Notwithstanding the objections, 3M is
willing to confer on a reasonable scope of documents related to the production
rate of its N95 respirators. 3M will not produce its confidential documents in the
absence of a protective order with a Highly Confidential/Attorneys’ eyes only

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1 provision.

2 **MOTION TO COMPEL:** In its Counterclaim, AIME alleges that one of its mutual
3 customers, Boston Pharm (“BP”) has also witnessed multiple respirator offers from 3M
4 insiders that, when totaled, far exceed the stated global capacity 3M advertises on its
5 website, in its press releases, and in its lawsuit. AIME alleges 3M is not being forthright
6 with the public about its production capacity. Counterclaim, para. 33. AIME further
7 alleges that 3M has motives to underestimate its production capacity. Counterclaim, para. 34.
8 For one, it gets the President off their back, thereby avoiding further negative press. It also
9 keeps prices for its masks higher by creating the false impression of scarcity for its product.
10 It also allows 3M to allocate fewer masks to the American market, thereby maximizing
11 profits dealing in more lucrative overseas markets.

12 As such, this request is tailored to seek documents within the scope of AIME’s pleadings,
13 and is likely to lead to the discovery of admissible evidence. 3M tacitly admits this fact
14 when it states: “Notwithstanding the objections, 3M is willing to confer on a reasonable
15 scope of documents related to the production rate of its N95 respirators...”. AIME would
16 suggest that 3M’s obligation is to produce the requested documents rather than offer to
17 enter into settlement negotiations concerning the extent of its production.

18 **REQUEST NO. 24.** Any and all documents evidencing 3M’s U.S. rate of
19 production of respirators by state and/or nationally from January 2020 to present.

20 **RESPONSE:** 3M objects to this request as overly broad, unduly
21 burdensome, and disproportionate to the needs of the case. 3M also objects to
22 this request as it appears to seek confidential, proprietary information, which
23 will not be produced without a protective order. Notwithstanding the objections,
24 3M is willing to confer on a reasonable scope of documents. 3M will not produce
25 its confidential documents in the absence of a protective order with a Highly
26 Confidential/Attorneys’ eyes only provision.

27 **MOTION TO COMPEL: See Motion to Compel pertaining to REQUEST NO. 23 above.**

28 **REQUEST NO. 25.** Any and all documents forecasting 3M’s rate of
29 production of respirators globally and/or nationally from present to December
30 2021.

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33 COMPELLING 3M’S RESPONSE TO AIME’S FIRST
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36 LAW OFFICE OF RICHARD D. ROSS
37 2737 37TH AVE SW
38 SEATTLE, WA 98126
39 T: 206.660.0512

1 **RESPONSE:** 3M objects to this request as overly broad, unduly
2 burdensome, and disproportionate to the needs of the case. 3M also objects to
3 this request as it appears to seek confidential, proprietary information, which will
4 not be produced without a protective order. 3M will not produce its confidential
5 documents in the absence of a protective order with a Highly
6 Confidential/Attorneys' eyes only provision.

7 **MOTION TO COMPEL:** See Motion to Compel pertaining to REQUEST NO. 23 above.

8 **REQUEST NO. 26.** Any and all documents reflecting 3M's investment of
9 capital/resources or projections of investment by 3M from 2020 to December
10 2021.

11 **RESPONSE:** 3M objects to this request as overly broad, unduly
12 burdensome, and disproportionate to the needs of the case. See also 3M's
13 annual reports:
<https://investors.3m.com/financials/annual-reports-and-proxy-statements/default.aspx>.

14 **MOTION TO COMPEL:** See Motion to Compel pertaining to REQUEST NO. 23 above.

15 **REQUEST NO. 29.** Any and all documents evidencing "the prices that it
16 charges for 3M respirators" from January 2019 to present as alleged in paragraph
17 11 of the Complaint.

18 **RESPONSE:** 3M objects to this request as overly broad, unduly
19 burdensome, and disproportionate to the needs of the case. See also

20 <https://multimedia.3m.com/mws/media/1862179O/get-the-facts-n95-respirator-pricing.pdf>.

21 **MOTION TO COMPEL:** 3M's lawsuit calls the Counterclaim Plaintiffs, *inter alia*, "price
22 gougers" and "profiteers." AIME's Counterclaim essentially alleges 3M itself was selling
23 respirators at prices far exceeding those quoted in its lawsuit. AIME claims that "3M is
24 well-aware that its products are available on the secondary market at prices much higher
25 than those list prices that 3M only began publishing on its website after being enjoined by
26 the April 12, 2020 DPA Presidential Order." Counterclaim, para. 90. AIME claims that

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1 “since the demand for respirators of any origin has grown exponentially in response to the
 2 pandemic, 3M has been committed to seeking to maintain its monopoly and still meet this
 3 demand for its own selfish profit motives. 3M is not trying to keep its respirators priced
 4 fairly. 3M only began publishing its prices after being forced to do so. 3M is well-aware
 5 that its respirators are routinely traded on the secondary market much like commodities,
 6 and that these prices far exceed those quoted in its lawsuit. If 3M truly wanted to be fair to
 7 the citizens of the U.S., it would have funneled a much larger share of its world respirator
 8 output to the U.S., rather than waiting for the President to invoke the DPA and forcing it to
 9 do so. Counterclaim, para. 91.

10 AIME claims that “On information and belief, 3M is able to get away with understating its
 11 production capacity because a significant portion of 3M’s respirator production is being
 12 sold “out the back door” of its overseas facilities, outside its normal channels, with 3M
 13 executives and insiders reaping huge personal rewards.” Counterclaim, para. 35.

14 As such, this request seeking “the prices that 3M charges for 3M respirators” is tailored to
 15 seek documents within the scope of AIME’s pleadings and is likely to lead to the discovery
 16 of admissible evidence.

17 **REQUEST NO. 30.** Any and all documents evidencing “bad actors” as
 18 alleged in paragraph 12 of the Complaint.

19 **RESPONSE:** 3M objects to this request to the extent that it seeks either
 20 attorney-client privileged or work-product privileged material. Without waiving
 21 any objections, see documents included with the initial disclosures. Discovery is
 22 ongoing. Additional material will be provided when available.

23 **MOTION TO COMPEL:** By making a blanket assertion of attorney client privileged
 24 communications and attorney work product without producing a privilege log, the
 25 Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

26 “[I]t is not an appropriate response to a request for production of documents to state that
 27 the documents were previously produced. The responding party must provide specific
 28 identification of the documents corresponding to the specific request.” *Sundance Image*
Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

29 **REQUEST NO. 32.** Any and all documents of the information 3M has provided
 30 relating to the instant case to federal and state authorities as alleged in
 31 paragraph 13 of the Complaint.

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1 **RESPONSE:** 3M **objects** to this request to the extent that it seeks either
2 attorney-client privileged or work-product privileged material. 3M objects to
3 this request as overly broad, unduly burdensome, and disproportionate to the
4 needs of the case. 3M is willing to confer on an appropriate scope of this request.
5 3M will not produce its confidential documents in the absence of a protective order
6 with a Highly Confidential/Attorneys' eyes only provision.

7 **MOTION TO COMPEL:** 3M's lawsuit alleges it is "working with law enforcement
8 authorities around the world, including the Department of Justice, state Attorneys General,
9 the Federal Bureau of Investigation, the U.S. Attorney General, and local authorities to
10 combat price-gouging and other unlawful activities." Complaint, para. 13. AIME did in
11 fact receive a subpoena from the Department of Justice at or about the same time 3M sued
12 AIME.

13 This request seeks documents that were provided to law enforcement, which are likely to
14 include statements by 3M describing 3M's characterization of AIME's conduct. Thus, the
15 Request seeks potential admissions of a party opponent, which constitutes fertile discovery
16 grounds.

17 **MOTION TO COMPEL:** By making a blanket assertion of attorney client privileged
18 communications and attorney work product without producing a privilege log, the
19 Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

20 "[I]t is not an appropriate response to a request for production of documents to state that
21 the documents were previously produced. The responding party must provide specific
22 identification of the documents corresponding to the specific request." *Sundance Image
23 Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

24 **REQUEST NO. 34.** Any and all documents reflecting that Each Defendant
25 has also "committed and intentionally directed tortious acts toward residents in
26 the District" as alleged in paragraph 27 of the Complaint.

27 **RESPONSE:** 3M objects to this request to the extent that it seeks either
28 attorney-client privileged or work-**product** privileged material. Without waiving
29 any objections, see documents included with the initial disclosures. Discovery is
30 ongoing. Additional material will be provided when available.

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1 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
2 **communications and attorney work product without producing a privilege log, the**
3 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

4 “[I]t is not an appropriate response to a request for production of documents to state that
5 the documents were previously produced. The responding party must provide specific
6 identification of the documents corresponding to the specific request.” *Sundance Image*
7 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

8 **REQUEST NO. 35.** Any and all documents reflecting instances where 3M is
9 providing N95 respirators to heroic **individuals** on the front lines of the battle of
10 Covid 19 as alleged in paragraph 41 of the Complaint.

11 **RESPONSE:** 3M objects to this request to the extent that it seeks either
12 attorney-client privileged or work-product privileged material. 3M objects to
13 this request as overly broad, unduly burdensome, and disproportionate to the
14 needs of the case. 3M is willing to confer on an appropriate scope of this request.
15 3M will not produce its confidential documents in the absence of a protective order
16 with a Highly Confidential/Attorneys’ eyes only provision.

17 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
18 **communications and attorney work product without producing a privilege log, the**
19 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure. By**
20 **stating that “3M is willing to confer on an appropriate scope of this request,” 3M tacitly**
21 **admits at least some documents are due to be produced. AIME would suggest that 3M’s**
22 **obligation is to produce the requested documents rather than offer to enter into settlement**
23 **negotiations concerning the extent of its production.**

24 **By making a blanket assertion of attorney client privileged communications and attorney**
25 **work product without producing a privilege log, the Counterclaim Defendant has violated**
26 **Rule 26(b)(5), Federal Rules of Civil Procedure.**

27 “[I]t is not an appropriate response to a request for production of documents to state that
28 the documents were previously produced. The responding party must provide specific
29 identification of the documents corresponding to the specific request.” *Sundance Image*
30 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

31 **REQUEST NO. 36.** Any and all documentation reflecting instances where 3M

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1 sold an N-95 respirator at price different than the list price as alleged in
2 paragraph 46 a. of the Complaint.

3 **RESPONSE:** 3M objects to this request to the extent that it seeks either
4 attorney-client privileged or work-product privileged material. 3M objects to
5 this request as overly broad, unduly burdensome, and disproportionate to the
6 needs of the case. Moreover, the list prices noted are suggested **prices** to end
7 customers. 3M's prices to its authorized distributors are lower than these list prices
8 and depend on the distributor. Further, an end customer's actual prices may be
9 lower than these list prices, as negotiated between the end customer and its chosen
distributor.

10 **MOTION TO COMPEL: By making a blanket assertion of attorney client privileged**
11 **communications and attorney work product without producing a privilege log, the**
12 **Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.**

13 **In addition, 3M doubles down by suggesting that prices to its distributors and end**
14 **customer are actually lower than its list prices. On its Motion to Compel directed to**
15 **REQUEST NO. 29, AIME explains that 3M was actually selling its respirators at prices**
16 **much higher than its list prices. As such, this request seeking "instances where 3M sold an**
N-95 respirator at a price different than the list price as alleged in paragraph 46 a. of
the Complaint" is tailored to seek documents within the scope of AIME's pleadings, and is
likely to lead to the discovery of admissible evidence.

17 **REQUEST NO. 37. Any** and all documentation evidencing the allegations in
18 Paragraph 56 of the Complaint.

19 **RESPONSE:** 3M objects to this request to the extent that it seeks either
20 attorney-client privileged or work-product privileged material. 3M objects to
21 this request as overly broad, unduly burdensome, and disproportionate to the
22 needs of the case. 3M is willing to confer on an appropriate scope of **this** request.
23 3M will not produce its confidential documents in the absence of a protective order
24 with a Highly Confidential/Attorneys' eyes only provision.

25 **MOTION TO COMPEL: Paragraph 56 of 3M's Complaint alleges that "Facing increasing**

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1 demand, by February 5, 2020, 3M confirmed and reiterated its policy to sell its N95
2 respirators to its authorized distributors only.” Counterclaim Plaintiffs have not seen any
3 such confirmation or reiteration of its referenced policy. Based on the pricing issues being
4 squarely raised in the pleadings, this Request is tailored to seek documents within the scope
5 of AIME’s pleadings, and is likely to lead to the discovery of admissible evidence.

6 By making a blanket assertion of attorney client privileged communications and attorney
7 work product without producing a privilege log, the Counterclaim Defendant has violated
8 Rule 26(b)(5), Federal Rules of Civil Procedure.

9 “[I]t is not an appropriate response to a request for production of documents to state that
10 the documents were previously produced. The responding party must provide specific
11 identification of the documents corresponding to the specific request.” *Sundance Image*
12 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

13 **REQUEST NO. 38.** Any and all documentation evidencing the allegation in
14 Paragraph 58 “Defendants began to inform customers that they had access to
15 more than 500 million units.”

16 **RESPONSE:** 3M objects to this request to the extent that it seeks either
17 attorney-client privileged or work-**product** privileged material. Without waiving
18 any objections, see documents included with the initial disclosures. Discovery is
19 ongoing. Additional material will be provided when available.

20 **MOTION TO COMPEL:** By making a blanket assertion of attorney client privileged
21 communications and attorney work product without producing a privilege log, the
22 Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

23 “[I]t is not an appropriate response to a request for production of documents to state that
24 the documents were previously produced. The responding party must provide specific
25 identification of the documents corresponding to the specific request.” *Sundance Image*
26 *Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

27 **REQUEST NO. 39.** Any and all documents evidencing the allegation in
28 paragraph 59 that “Defendants sent emails to **potential** customers” including but
29 not limited to such emails as alleged.

30 **RESPONSE:** 3M **objects** to this request to the extent that it seeks either

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attorney-client privileged or work-product privileged material. Without waiving any objections, see documents included with the initial disclosures. Discovery is ongoing. Additional material will be provided when available.

MOTION TO COMPEL: By making a blanket assertion of attorney client privileged communications and attorney work product without producing a privilege log, the Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

“[I]t is not an appropriate response to a request for production of documents to state that the documents were previously produced. The responding party must provide specific identification of the documents corresponding to the specific request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278*, at *5 (S.D. Cal. Aug. 19, 2005).

REQUEST NO. 40. Any and all documentation evidencing the allegations in Paragraph 60 of the Complaint.

RESPONSE: 3M objects to this request to the extent that it seeks either attorney-client privileged or work-product privileged material. Without waiving any objections, see documents included with the initial disclosures. Discovery is ongoing. Additional material will be provided when available.

MOTION TO COMPEL: Paragraph 60 of the Complaint alleges that “[i]n late May, 3M learned that Defendants offered similar terms to other potential customers, but had increased their price per unit to \$3.00. Defendants have also offered the product to other customers for \$6.95 per unit, vastly above the list price.” These are very specific allegations against AIME and Counterclaim Plaintiffs are entitled to the documents upon which the allegations are based.

“[I]t is not an appropriate response to a request for production of documents to state that the documents were previously produced. The responding party must provide specific identification of the documents corresponding to the specific request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278*, at *5 (S.D. Cal. Aug. 19, 2005).

By making a blanket assertion of attorney client privileged communications and attorney work product without producing a privilege log, the Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

REQUEST NO. 41. Any and documentation of the list price for N95

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1 Model 1860` respirators for the last two years to present.

2 **RESPONSE:** 3M objects to this request as overly broad, unduly
3 burdensome, and disproportionate to the needs of the case. See also

4 <https://multimedia.3m.com/mws/media/1862179O/get-the-facts-n95-respirator-pricing.pdf>.

5 **MOTION TO COMPEL:** 3M claims it publishes list prices on its website, but AIME has
6 questioned when that practice began in relation to the time of its lawsuit against AIME.
7 AIME also questions when 3M began publishing list prices in relation to the following
8 allegation made by AIME: “3M was called-out publicly by the U.S. President for placing
9 profits over patriotism during the global pandemic. On April 2, 2020, the President
invoked the Defense Production Act against 3M, forcing it to re-route its sales of a portion
of its respirators to American healthcare workers, and away from 3M’s more lucrative
markets.”

10 Because the timing of 3M’s practice of publishing its list prices is an issue being squarely
11 raised in the pleadings, this Request is tailored to seek documents within the scope of
12 AIME’s pleadings, and is likely to lead to the discovery of admissible evidence.

13 **REQUEST NO. 42.** Any all documentation of the allegations in Paragraph
14 62 of the Complaint including but not limited to a copy of the emails alleged.

15 **RESPONSE:** 3M objects to this request to the extent that it seeks either
16 attorney-client privileged or work-product privileged material. Without waiving
any objections, see documents included with the initial disclosures. Discovery is
17 ongoing. Additional material will be provided when available.

19 **MOTION TO COMPEL:** Paragraph 62 of 3M’s Complaint alleges “Defendants attached
20 3M product description materials to some of their emails to their potential customers.”
These are very specific allegations against AIME and Counterclaim Plaintiffs are entitled
21 to the documents upon which the allegations are based.

22 “[I]t is not an appropriate response to a request for production of documents to state that
the documents were previously produced. The responding party must provide specific
23 identification of the documents corresponding to the specific request.” *Sundance Image
Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

25 **By making a blanket assertion of attorney client privileged communications and attorney**

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1 work product without producing a privilege log, the Counterclaim Defendant has violated
2 Rule 26(b)(5), Federal Rules of Civil Procedure.

3 **REQUEST NO. 43.** Any and all documents of the allegations in Paragraph 63 of
4 the Complaint.

5 **RESPONSE:** 3M objects to this request to the extent that it seeks either
6 attorney-client privileged or work-product privileged material. Without waiving
7 any objections, see documents included with the initial disclosures. Discovery is
ongoing. Additional material will be provided when available.

8 **MOTION TO COMPEL:** Paragraph 63 of 3M's Complaint accuses AIME, "on
9 information and belief" of making "outright lies" the "their potential victims." These are
10 very specific allegations against AIME and Counterclaim Plaintiffs are entitled to the
documents upon which the allegations are based.

11 "[I]t is not an appropriate response to a request for production of documents to state that
12 the documents were previously produced. The responding party must provide specific
13 identification of the documents corresponding to the specific request." *Sundance Image
Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

14 By making a blanket assertion of attorney client privileged communications and attorney
15 work product without producing a privilege log, the Counterclaim Defendant has violated
Rule 26(b)(5), Federal Rules of Civil Procedure.

16 **REQUEST NO. 44.** Any and all documents of the allegations in Paragraph 64 of
the Complaint.

17 **RESPONSE:** 3M objects to this request to the extent that it seeks either
18 attorney-client privileged or work-product privileged material. Without waiving
19 any objections, see documents included with the initial disclosures. Discovery is
20 ongoing. Additional material will be provided when available.

21
22 **MOTION TO COMPEL:** Paragraph 64 of the Complaint alleges "Defendants demanded a
100%, non-refundable prepayment to AIME....". These are very specific allegations
against AIME and Counterclaim Plaintiffs are entitled to the documents upon which the
allegations are based.

23
24
25
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1 “[I]t is not an appropriate response to a request for production of documents to state that
2 the documents were previously produced. The responding party must provide specific
3 identification of the documents corresponding to the specific request.” Sundance Image
Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

4 **By making a blanket assertion of attorney client privileged communications and attorney
5 work product without producing a privilege log, the Counterclaim Defendant has violated
6 Rule 26(b)(5), Federal Rules of Civil Procedure.**

7 **REQUEST NO. 45.** Any and all documents of the allegations in Paragraph 65 of
8 the Complaint

9 **RESPONSE:** 3M objects to this request as overly broad, unduly
10 burdensome, and disproportionate to the needs of the case. Notwithstanding the
11 objections, 3M is willing to confer on a reasonable scope of documents. 3M will
12 not produce its confidential documents in the absence of a protective order with
13 a Highly Confidential/Attorneys' eyes only provision.

14 **MOTION TO COMPEL: Paragraph 65 of the Complaint alleges “Defendants' description
15 of the 3M sales process is entirely inaccurate.” These are very specific allegations against
16 AIME and Counterclaim Plaintiffs are entitled to the documents upon which the
17 allegations are based.**

18 **By stating that “3M is willing to confer on a reasonable scope of documents,” 3M tacitly
19 admits at least some documents are due to be produced. AIME would suggest that 3M’s
20 obligation is to produce the requested documents rather than offer to enter into settlement
21 negotiations concerning the extent of its production.**

22 **REQUEST NO. 47.** Any and all documents evidencing the allegations of
23 Paragraph 68 of the Complaint “When 3M contacted Defendants about their
24 offers and expressed concerns.”

25 **RESPONSE:** 3M objects to this request to the extent that it seeks either
26 attorney-client privileged or work-product privileged material. Without waiving
any objections, see documents included with the initial disclosures. Discovery is
ongoing. Additional material will be provided when available.

1 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
2 of documents to state that the documents were previously produced. The responding party
3 must provide specific identification of the documents corresponding to the specific
request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

4 **By making a blanket assertion of attorney client privileged communications and attorney
5 work product without producing a privilege log, the Counterclaim Defendant has violated
Rule 26(b)(5), Federal Rules of Civil Procedure.**

6 **REQUEST NO. 48.** Any and all documents evidencing the allegations in
7 paragraph 70 of the Complaint.

8 **RESPONSE:** 3M objects to this request to the extent that it seeks either
9 attorney-client privileged or work-product privileged material. Without waiving
10 any objections, see documents included with the initial disclosures. Discovery is
11 ongoing. Additional material will be provided when available.

12 **MOTION TO COMPEL: Paragraph 70 of the Complaint alleges AIME intended to
13 “confuse and deceive their potential customers into believing that Defendants are
14 authorized distributors of Plaintiffs products and had an existing relationship with 3M.”
15 These are very specific allegations against AIME and Counterclaim Plaintiffs are entitled
to the documents upon which the allegations are based.**

16 “[I]t is not an appropriate response to a request for production of documents to state that
17 the documents were previously produced. The responding party must provide specific
18 identification of the documents corresponding to the specific request.” *Sundance Image
Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

19 **By making a blanket assertion of attorney client privileged communications and attorney
20 work product without producing a privilege log, the Counterclaim Defendant has violated
Rule 26(b)(5), Federal Rules of Civil Procedure.**

21
22 **REQUEST NO. 50.** Any and all documents evidencing the allegations in
23 paragraph 72 of the Complaint that “Defendants have engaged in and continue to
24 engage in price gouging of 3M respirators by marketing and selling 3M N95
25 respirators for exorbitant prices, while falsely claiming an affiliation and business

relationship with 3M" including but not limited to any and all documents evidencing the definition of price gouging as alleged.

RESPONSE: 3M objects to this request to the extent that it seeks either attorney-client privileged or work-product privileged material. Without waiving any objections, see documents included with the initial disclosures. Discovery is ongoing. Additional material will be provided when available.

MOTION TO COMPEL: "**[I]t is not an appropriate response to a request for production of documents to state that the documents were previously produced. The responding party must provide specific identification of the documents corresponding to the specific request.**" *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

By making a blanket assertion of attorney client privileged communications and attorney work product without producing a privilege log, the Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

REQUEST NO. 51. Any and all documents, including but not limited to any financial documents, causing irreparable harm as alleged in paragraph 73 and 74 of the Complaint.

RESPONSE: 3M objects to this request to the extent that it seeks either attorney-client privileged or work-product privileged material. Without waiving any objections, see documents included with the initial disclosures. Discovery is ongoing. Additional material will be provided when available.

MOTION TO COMPEL: "**[I]t is not an appropriate response to a request for production of documents to state that the documents were previously produced. The responding party must provide specific identification of the documents corresponding to the specific request.**" *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

By making a blanket assertion of attorney client privileged communications and attorney work product without producing a privilege log, the Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

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1 **REQUEST NO. 52.** Any and all documents evidencing attempts by any
2 Defendant to purchase, sell or re-sell anything other than genuine 3M products as
3 alleged in Paragraph 76 of the Complaint.

4 **RESPONSE:** 3M objects to this request to the extent that it seeks either
5 attorney-client privileged or work-product privileged material. Without waiving
6 any objections, see documents included with the initial disclosures. Discovery is
7 ongoing. Additional material will be provided when available.

8 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
9 of documents to state that the documents were previously produced. The responding party
10 must provide specific identification of the documents corresponding to the specific
11 request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5
12 (S.D. Cal. Aug. 19, 2005).

13 **By making a blanket assertion of attorney client privileged communications and attorney
14 work product without producing a privilege log, the Counterclaim Defendant has violated
15 Rule 26(b)(5), Federal Rules of Civil Procedure.**

16 **REQUEST NO. 53.** Any and all documents that contain “Defendants’ use of
17 Plaintiff’s famous 3M Trademarks and/or name to advertise, market, offer for
18 sale, and/or sell purported 3M brand 95 respirators to consumers at
19 exorbitant prices” as alleged in paragraph 80 of the Complaint.

20 **RESPONSE:** 3M objects to this request to the extent that it seeks either
21 attorney-client privileged or work-product privileged material. Without waiving
22 any objections, see documents included with the initial disclosures. Discovery is
23 ongoing. Additional material will be provided when available. See also
24 <https://www.aimeusa.com/legal/legal>.

25 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
26 of documents to state that the documents were previously produced. The responding party
27 must provide specific identification of the documents corresponding to the specific
28 request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5
29 (S.D. Cal. Aug. 19, 2005).

30 AIME’S AMENDED MOTION FOR AN ORDER
31 OVERRULING 3M’S OBJECTIONS AND
32 COMPELLING 3M’S RESPONSE TO AIME’S FIRST
33 REQUEST FOR PRODUCTION OF DOCUMENTS
34 Case No.: 2:20-cv-01096-RAJ -27

35 LAW OFFICE OF RICHARD D. ROSS
36 2737 37TH AVE SW
37 SEATTLE, WA 98126
38 T: 206.660.0512

1 **By making a blanket assertion of attorney client privileged communications and attorney**
2 **work product without producing a privilege log, the Counterclaim Defendant has violated**
3 **Rule 26(b)(5), Federal Rules of Civil Procedure.**

4 **REQUEST NO. 54.** Any and all documents evidencing dilution of Plaintiff's
5 marks and/or reputation or likely dilution of Plaintiff's marks and or
6 reputation as alleged in Paragraphs 87, 88 and 89 of the Complaint,
7 including but not limited to any financial documentation.

8 **RESPONSE:** 3M objects to this request to the extent that it seeks either
9 attorney-client privileged or work-product privileged material. Without waiving
10 any objections, see documents included with the initial disclosures. Discovery is
11 ongoing. Additional material will be provided when available. See also
<https://www.aimeusa.com/legal/legal>.

12 **MOTION TO COMPEL: "[I]t is not an appropriate response to a request for production**
13 **of documents to state that the documents were previously produced. The responding party**
14 **must provide specific identification of the documents corresponding to the specific**
15 **request."** Sundance Image Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

16 **By making a blanket assertion of attorney client privileged communications and attorney**
17 **work product without producing a privilege log, the Counterclaim Defendant has violated**
18 **Rule 26(b)(5), Federal Rules of Civil Procedure.**

19 **REQUEST NO. 55** Any and all documents evidencing the irreparable harm
20 alleged in Paragraphs 90 and 100 of the Complaint.

21 **RESPONSE:** 3M objects to this request to the extent that it seeks either
22 attorney-client privileged or work-product privileged material. Without waiving
23 any objections, see documents included with the initial disclosures. Discovery is
24 ongoing. Additional material will be provided when available.

25 **MOTION TO COMPEL: "[I]t is not an appropriate response to a request for production**
26 **of documents to state that the documents were previously produced. The responding party**

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1 must provide specific identification of the documents corresponding to the specific
2 request." *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

3 By making a blanket assertion of attorney client privileged communications and attorney
4 work product without producing a privilege log, the Counterclaim Defendant has violated
Rule 26(b)(5), Federal Rules of Civil Procedure.

5
6 **REQUEST NO. 57.** Any and all documents evidencing that the Defendants
7 knowingly misrepresented the amount of product they could procure and the
8 method for procuring the product to their potential customers as alleged in
Paragraph 107 of the Complaint.

9 **RESPONSE:** 3M objects to this request to the extent that it seeks either
10 attorney-client privileged or work-product privileged material. Without waiving
11 any objections, see documents included with the initial disclosures. Discovery is
12 ongoing. This information is uniquely in the possession of Defendants. Additional
13 material will be provided when available.

14
15 **MOTION TO COMPEL:** "[I]t is not an appropriate response to a request for production
16 of documents to state that the documents were previously produced. The responding party
must provide specific identification of the documents corresponding to the specific
request." *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

18 By making a blanket assertion of attorney client privileged communications and attorney
19 work product without producing a privilege log, the Counterclaim Defendant has violated
Rule 26(b)(5), Federal Rules of Civil Procedure.

21
22 **REQUEST NO. 58.** Any and all documents evidencing that the Defendants
actions were intended to deceive Defendants' potential customers as alleged in
23 Paragraph 108 of the Complaint.

24 **RESPONSE:** 3M objects to this request to the extent that it seeks either
25 attorney-client privileged or work-product privileged material. Without waiving
any objections, see documents included with the initial disclosures. Discovery is

ongoing. This information is uniquely in the possession of Defendants. Additional material will be provided when available.

MOTION TO COMPEL: “[I]t is not an appropriate response to a request for production of documents to state that the documents were previously produced. The responding party must provide specific identification of the documents corresponding to the specific request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

By making a blanket assertion of attorney client privileged communications and attorney work product without producing a privilege log, the Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

REQUEST NO. 59. Any and all documents that evidence that the Defendants actions are immoral and unlawful under Washington law as alleged in paragraph 109.

RESPONSE: 3M objects to this request to the extent that it seeks either attorney-client privileged or work-product privileged material. Without waiving any objections, see documents included with the initial disclosures. Discovery is ongoing. This information is uniquely in the possession of Defendants. Additional material will be provided when available.

MOTION TO COMPEL: Paragraph 109 of the Complaint alleges: “Defendants increased the price of 3M N95 respirators by attempting to resell the product at a markup of between 1.6 and 3.9 times 3M’s list price... [which] is immoral and unlawful under Washington law.” In truth, the State of Washington has no price gouging law. These are very specific allegations against AIME and Counterclaim Plaintiffs are entitled to the documents upon which the allegations are based.

“[I]t is not an appropriate response to a request for production of documents to state that the documents were previously produced. The responding party must provide specific identification of the documents corresponding to the specific request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

By making a blanket assertion of attorney client privileged communications and attorney work product without producing a privilege log, the Counterclaim Defendant has violated Rule 26(b)(5), Federal Rules of Civil Procedure.

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1 **REQUEST NO. 60.** Any and all documents, including but not limited to
2 financial documents, that Defendants actions have harmed the public interest or
3 will continue to harm the public interest as alleged in paragraphs 110 and 111 of
4 the Complaint.

5 **RESPONSE:** 3M objects to this request to the extent that it seeks either
6 attorney-client privileged or work-product privileged material. Without waiving
7 any objections, see documents included with the initial disclosures. Discovery is
8 ongoing. This information is uniquely in the possession of Defendants. Additional
9 material will be provided when available.

10 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
11 of documents to state that the documents were previously produced. The responding party
12 must provide specific identification of the documents corresponding to the specific
13 request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

14 By making a blanket assertion of attorney client privileged communications and attorney
15 work product without producing a privilege log, the Counterclaim Defendant has violated
16 Rule 26(b)(5), Federal Rules of Civil Procedure.

17 **REQUEST NO. 61.** Any and all documents evidencing the irreparable harm
18 alleged in paragraph 112 of the Complaint.

19 **RESPONSE:** 3M objects to this request to the extent that it seeks either
20 attorney-client privileged or work-product privileged material. Without waiving
21 any objections, see documents included with the initial disclosures. Discovery is
22 ongoing. This information is uniquely in the possession of Defendants. Additional
23 material will be provided when available.

24 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
25 of documents to state that the documents were previously produced. The responding party
26 must provide specific identification of the documents corresponding to the specific
request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5

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1 (S.D. Cal. Aug. 19, 2005).

2 **By making a blanket assertion of attorney client privileged communications and attorney**
3 **work product without producing a privilege log, the Counterclaim Defendant has violated**
Rule 26(b)(5), Federal Rules of Civil Procedure.

4

5 **REQUEST NO. 62.** Any and all documents evidencing the damages alleged in
6 paragraph 113 of the Complaint.

7 **RESPONSE:** 3M objects to this request to the extent that it seeks either
8 attorney-client privileged or work-product privileged material. Without waiving
9 any objections, see documents included with the initial disclosures. Discovery is
10 ongoing. This information is uniquely in the possession of Defendants. Additional
material will be provided when available.

11

12 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
13 of documents to state that the documents were previously produced. The responding party
14 must provide specific identification of the documents corresponding to the specific
request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

15 **By making a blanket assertion of attorney client privileged communications and attorney**
16 **work product without producing a privilege log, the Counterclaim Defendant has violated**
17 **Rule 26(b)(5), Federal Rules of Civil Procedure.**

18 **REQUEST NO. 63.** Any and all documents evidencing “Defendants, acting in
19 concert with each other, and with intent to commit civil conspiracy, schemed to
20 misappropriate 3M’s Trademarks and good reputation in order to injure 3M’s
21 business and gain and unfair advantage in the marketplace” as alleged in
paragraph 115 of the Complaint.

22 **RESPONSE:** 3M objects to this request to the extent that it seeks either
23 attorney-client privileged or work-product privileged material. Without waiving
24 any objections, see documents included with the initial disclosures. Discovery is
25 ongoing. This information is uniquely in the possession of Defendants. Additional
material will be provided when available.

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1 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
2 of documents to state that the documents were previously produced. The responding party
3 must provide specific identification of the documents corresponding to the specific
4 request.” Sundance Image Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

5 **By making a blanket assertion of attorney client privileged communications and attorney
6 work product without producing a privilege log, the Counterclaim Defendant has violated
7 Rule 26(b)(5), Federal Rules of Civil Procedure.**

8 **REQUEST NO. 64.** Any and all documents of an unlawful or overt act by the
9 Defendants and/or each Defendant as alleged in paragraph 116 of the Complaint.

10 **RESPONSE:** 3M objects to this request to the extent that it seeks either
11 attorney-client privileged or work-product privileged material. Without waiving
12 any objections, see documents included with the initial disclosures. Discovery is
13 ongoing. This information is uniquely in the possession of Defendants. Additional
14 material will be provided when available.

15 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
16 of documents to state that the documents were previously produced. The responding party
17 must provide specific identification of the documents corresponding to the specific
request.” Sundance Image Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

18 **By making a blanket assertion of attorney client privileged communications and attorney
19 work product without producing a privilege log, the Counterclaim Defendant has violated
20 Rule 26(b)(5), Federal Rules of Civil Procedure.**

21 **REQUEST NO. 65.** Any and all documents evidencing “Defendants conspired
22 to engage in behavior” in violation of laws and passing off as alleged in
23 paragraph 116 of the Complaint

24 **RESPONSE:** 3M objects to this request to the extent that it seeks either
25 attorney-client privileged or work-product privileged material. Without waiving
any objections, see documents included with the initial disclosures. Discovery is

1 ongoing. This information is uniquely in the possession of Defendants. Additional
2 material will be provided when available.

3 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
4 of documents to state that the documents were previously produced. The responding party
5 must provide specific identification of the documents corresponding to the specific
6 request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

7 **By making a blanket assertion of attorney client privileged communications and attorney
work product without producing a privilege log, the Counterclaim Defendant has violated
Rule 26(b)(5), Federal Rules of Civil Procedure.**

8 **REQUEST NO. 66.** Any and all documents evidencing the irreparable harm
9 alleged paragraphs 117 and 118 of the Complaint.

10 **RESPONSE:** 3M objects to this request to the extent that it seeks either
11 attorney-client privileged or work-product privileged material. Without waiving
12 any objections, see documents included with the initial disclosures. Discovery is
13 ongoing. Additional material will be provided when available.

14 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
15 of documents to state that the documents were previously produced. The responding party
16 must provide specific identification of the documents corresponding to the specific
17 request.” *Sundance Image Tech., Inc. v. Cone Editions Press, Ltd.*, No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

18 **By making a blanket assertion of attorney client privileged communications and attorney
work product without producing a privilege log, the Counterclaim Defendant has violated
19 Rule 26(b)(5), Federal Rules of Civil Procedure.**

20 **REQUEST NO. 67.** Any and all documents evidencing the damages alleged in
21 paragraph 120 of the Complaint.

22 **RESPONSE:** 3M objects to this request to the extent that it seeks either
23 attorney-client privileged or work-product privileged material. Without waiving
24 any objections, see documents included with the initial disclosures. Discovery is
25 ongoing. Additional material will be provided when available.

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1 **MOTION TO COMPEL:** “[I]t is not an appropriate response to a request for production
2 of documents to state that the documents were previously produced. The responding party
3 must provide specific identification of the documents corresponding to the specific
4 request.” Sundance Image Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5
(S.D. Cal. Aug. 19, 2005).

5 **By making a blanket assertion of attorney client privileged communications and attorney
6 work product without producing a privilege log, the Counterclaim Defendant has violated
Rule 26(b)(5), Federal Rules of Civil Procedure.**

7
8 **REQUEST NO. 68.** Any and all documents by and/or between any of the
9 following: Providence Medical Group, Cole Ercanbarck, Vizient, John Shinar
and/or Med Line.

10 **RESPONSE:** 3M objects to this request as overly broad, unduly
11 burdensome, and disproportionate to the needs of the case. Specifically, Med
12 Line is neither a party to this case nor involved in it in anyway—any production
13 of Med Line materials would only lead to the production of irrelevant
14 documents. 3M has already produced the documents relevant to this case with
15 its initial disclosures. Notwithstanding the objections, 3M is willing to confer
16 on a reasonable scope of documents. 3M will not produce its confidential
17 documents in the absence of a protective order with a Highly
Confidential/Attorneys' eyes only provision.

18
19 **MOTION TO COMPEL: In this Request, AIMI identifies witnesses with personal
20 knowledge of the event in question. 3M tacitly admits the documents in this Request are
21 discoverable by stating that “Notwithstanding the objections, 3M is willing to confer on a
reasonable scope of documents.**

22 “[I]t is not an appropriate response to a request for production of documents to state that
23 the documents were previously produced. The responding party must provide specific
24 identification of the documents corresponding to the specific request.” Sundance Image
Tech., Inc. v. Cone Editions Press, Ltd., No. WL 8173278, at *5 (S.D. Cal. Aug. 19, 2005).

25 **By making a blanket assertion of attorney client privileged communications and attorney
work product without producing a privilege log, the Counterclaim Defendant has violated**

26 AIME'S AMENDED MOTION FOR AN ORDER
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1 **Rule 26(b)(5), Federal Rules of Civil Procedure.**

2 **REQUEST NO. 69.** Any and all documents evidencing the 3M official processes
3 or policies for the following: 3M, 3M Global, 3M Global Distributors, 3M
4 Resellers, and/or 3M Private Sellers.

5 **RESPONSE:** 3M objects to this request as overly broad, unduly
6 burdensome, and disproportionate to the needs of the case. 3M also objects as
7 some of this material is confidential and proprietary and will not be produced
8 without a protective order. Additionally, 3M Global, 3M's distributors, Resellers,
9 and Private Sellers are not 3M entities and are, in fact, all unrelated, non-parties.
10 Therefore, 3M does not have possession or control over documents in their
11 possession. Notwithstanding the objections, 3M is willing to confer on a
12 reasonable scope of documents. 3M will not produce its confidential documents
13 in the absence of a protective order with a Highly Confidential/Attorneys' eyes
14 only provision.

15 **MOTION TO COMPEL:** 3M tacitly admits the documents in this Request are discoverable
16 by stating that "Notwithstanding the objections, 3M is willing to confer on a reasonable
17 scope of documents. AIME would suggest that 3M's obligation is to produce the requested
18 documents rather than offer to enter into settlement negotiations concerning the extent of
19 its production.

20 **REQUEST NO. 70.** Any and all documents evidencing transactional history by
21 distributor, reseller, and private seller for 3M and/or 3M Global.

22 **RESPONSE:** 3M objects to this request as overly broad, unduly
23 burdensome, and disproportionate to the needs of the case. 3M also objects as
24 some of this material is confidential and proprietary and will not be produced
25 without a protective order. Additionally, 3M Global is not a 3M entity. Therefore,
26 3M does not have possession or control over documents in their possession.

27 Notwithstanding the objections, 3M is willing to confer on a reasonable scope of
28 documents. 3M will not produce its confidential documents in the absence of a
29 protective order with a Highly Confidential/Attorneys' eyes only provision.

1 MOTION TO COMPEL: 3M tacitly admits the documents in this Request are discoverable
2 by stating that “Notwithstanding the objections, 3M is willing to confer on a reasonable
3 scope of documents. AIME would suggest that 3M’s obligation is to produce the requested
4 documents rather than offer to enter into settlement negotiations concerning the extent of
its production.

5 This request seeking “the transactional history by distributor, reseller, and private seller” is
6 calculated to discover the prices that 3M charges for its respirators, and is therefore
7 tailored to seek documents within the scope of AIME’s pleadings, and is likely to lead to the
discovery of admissible evidence.

8 **REQUEST NO. 71.** All documents evidencing any transactions for the last
9 24 months between Plaintiff and Vizient, Providence Medical Group, and/or
10 Medline.

11 **RESPONSE:** 3M objects to this request as irrelevant, overly broad, unduly
12 burdensome, and disproportionate to the needs of the case. Specifically, Med
13 Line is neither a party to this case nor involved in it in anyway—any production
14 of Med Line materials would only lead to the production of irrelevant
15 documents. 3M also objects as some of this material is confidential and proprietary
16 and will not be produced without a protective order. Notwithstanding the
17 objections, 3M is willing to confer on a reasonable scope of documents. 3M will
18 not produce its confidential documents in the absence of a protective order with a
Highly Confidential/Attorneys’ eyes only provision.

19
20 **MOTION TO COMPEL:** Vizient, Providence Medical Group, and/or Medline were either
21 customers or potential customers of AIME. Once this lawsuit was filed, AIME was shunned
22 by these three companies. Counterclaim Plaintiffs allege, inter alia, that “This lawsuit
against AIME is an extension of 3M’s publicity campaign. This lawsuit was filed for the
23 ulterior purpose of driving out competition in the U.S. mask market, by threatening and
attempting to quash non-3M insiders who are getting rich making side deals for 3M
masks.” Counterclaim, para. 19. This request seeks “transactions for the last 24 months
24 between 3M and specific customers or potential customers of AIME. Plaintiff’s
transactional history by distributor, reseller, and private seller” is calculated to discover the
25 potential sales that were diverted from AIME to 3M as a result of the lawsuit, which is
relevant to the malicious prosecution claim. It is therefore tailored to seek documents

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1 **within the scope of AIME's pleadings, and is likely to lead to the discovery of admissible**
2 **evidence.**

3 **REQUEST NO. 74.** Any and all documents evidencing Plaintiff's cost of
4 manufacturing its N95 masks per production output, including but not limited to,
5 variable and fixed costs, material costs, and any other costs of production.

6 **RESPONSE:** 3M objects to this request as irrelevant, overly broad, unduly
7 burdensome, and disproportionate to the needs of the case. 3M also objects as
8 this request seeks confidential information, which 3M will not provide without
9 a protective order. Further, this overbroad request lacks any relevance to the
10 claims and defenses at issue, as 3M's manufacturing costs have no bearing on
11 Defendants' fraudulent actions, 3M's interaction with Defendants, or
12 Defendants' own manufacturing capacity.

13 **MOTION TO COMPEL: 3M's manufacturing costs are likely to lead to the discovery of**
14 **admissible evidence relating the 3M's definition of "price gouging" and "profiteering" as**
15 **those terms are employed in the lawsuit against AIME.**

16 **REQUEST NO. 75.** Any and all documents revealing each of Plaintiff's
17 manufacturing facilities in existence over the past two years where its 3M
18 brand N95 respirators have been manufactured.

19 **RESPONSE:** 3M objects to this request as irrelevant, overly broad, unduly
20 burdensome, and disproportionate to the needs of the case. 3M also objects as
21 this request seeks confidential information, which 3M will not provide
22 without a protective order. Notwithstanding the objections, 3M is willing to
23 confer on a reasonable scope of documents. 3M will not produce its confidential
24 documents in the absence of a protective order with a Highly
25 Confidential/Attorneys' eyes only provision.

26 **MOTION TO COMPEL: AIME has alleged "As it turns out, 3M's representations were**
27 **only half-truths. 3M grossly understated both its existing and future respirator production**
28 **capacity, a maneuver calculated to protect its more profitable foreign markets for these**

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1 products. 3M deceptively told its audience it would not raise its retail prices, when in fact,
2 3M does not sell its respirators on the retail market and does not limit the prices at which
3 its authorized distributors can sell respirators. Indeed, 3M turned a blind eye to its own
4 distributors, executives, and other insiders who were profiting from 3M's scarcity tactic,
5 which in turn was propagated by 3M's understated production capacity." Complaint, para.
6 40.

7 **Documents revealing each of 3M's manufacturing facilities in existence over the past two years where its 3M brand N95 respirators have been manufactured are likely to lead to the discovery of admissible evidence relating the 3M's global production capacity.**

8 **3M tacitly admits the relevance of this request by stating "Notwithstanding the objections, 3M is willing to confer on a reasonable scope of documents." AIME would suggest that 3M's obligation is to produce the requested documents rather than offer to enter into settlement negotiations concerning the extent of its production.**

9
10 **REQUEST NO. 76.** Any and all documents evidencing the number of 3M
11 brand N95 respirators manufactured at each facility for the last two years.

12 **RESPONSE:** 3M objects to this request as irrelevant, overly broad, unduly
13 burdensome, and disproportionate to the needs of the case. 3M also objects as
14 this request seeks confidential information, which 3M will not provide
15 without a protective order. Notwithstanding the objections, 3M is willing to
16 confer on a reasonable scope of documents. 3M will not produce its confidential
17 documents in the absence of a protective order with a Highly
18 Confidential/Attorneys' eyes only provision.

19 **MOTION TO COMPEL:** See AIME's Motion as it relates to REQUEST NO. 75 above.

20 **REQUEST NO. 77.** Any all documents listing the SKUs of all 3M brand N95
21 respirators for the last two years manufactured by Plaintiff.

22 **RESPONSE:** 3M objects to this request as irrelevant, overly broad, unduly
23 burdensome, and disproportionate to the needs of the case. Notwithstanding the
24 objections, 3M is willing to confer on a reasonable scope of documents. 3M will
25 not produce its confidential documents in the absence of a protective order with
26 a Highly Confidential/Attorneys' eyes only provision.

1 **MOTION TO COMPEL: See AIME's Motion as it relates to REQUEST NO. 75 above.**

2
3 **REQUEST NO. 78.** Any and all documents evidencing the number of 3M
4 brand N95 respirators delivered at each manufacturing facility for the last two
5 years, including but not limited to documents which list the deliveries by SKU.

6 **RESPONSE:** 3M objects to this request as irrelevant, overly broad, unduly
7 burdensome, and disproportionate to the needs of the case. 3M also objects as
8 this request seeks confidential information, which 3M will not provide
9 without a protective order. Notwithstanding the objections, 3M is willing to
10 confer on a reasonable scope of documents. 3M will not produce its confidential
11 documents in the absence of a protective order with a Highly
12 Confidential/Attorneys' eyes only provision.

13 **MOTION TO COMPEL: See AIME's Motion as it relates to REQUEST NO. 75 above.**

14
15 **REQUEST NO. 79.** Any and all documents evidencing the raw materials
16 used for the manufacture of 3M brand N95 respirators for the last two years,
17 including but not limited to any breakdowns by manufacturing facilities.

18 **RESPONSE:** 3M objects to this request as irrelevant, overly broad, unduly
19 burdensome, and disproportionate to the needs of the case. 3M also objects as
20 this request seeks confidential information, which 3M will not provide
21 without a protective order. Notwithstanding the objections, 3M is willing to
22 confer on a reasonable scope of documents. 3M will not produce its confidential
23 documents in the absence of a protective order with a Highly
24 Confidential/Attorneys' eyes only provision.

25
26 **MOTION TO COMPEL: See AIME's Motion as it relates to REQUEST NO. 75 above.**

1 **REQUEST NO. 80.** Any and all SGS reports by Plaintiff's manufacturing
2 facilities where 3M brand N95 respirators were manufactured for the past two
3 years.

4 **RESPONSE:** 3M objects to this request as irrelevant, overly broad, unduly
5 burdensome, and disproportionate to the needs of the case. 3M also objects as
6 this request seeks confidential information, which 3M will not provide
7 without a protective order. Notwithstanding the objections, 3M is willing to
8 confer on a reasonable scope of documents. 3M will not produce its confidential
9 documents in the absence of a protective order with a Highly
10 Confidential/Attorneys' eyes only provision.

11 **MOTION TO COMPEL: See AIME's Motion as it relates to REQUEST NO. 75 above.**

12 **REQUEST NO. 81.** Any and all bills of lading for all goods delivered at each of
13 Plaintiff's manufacturing facilities where 3M brand N95 respirators were
14 manufactured for the past two years.

15 **RESPONSE:** 3M objects to this request as irrelevant, overly broad, unduly
16 burdensome, and disproportionate to the needs of the case. 3M also objects as
17 this request seeks confidential information, which 3M will not provide
18 without a protective order. Notwithstanding the objections, 3M is willing to
19 confer on a reasonable scope of documents. 3M will not produce its confidential
20 documents in the absence of a protective order with a Highly
21 Confidential/Attorneys' eyes only provision.

22 **MOTION TO COMPEL: See AIME's Motion as it relates to REQUEST NO. 75 above.**

23 **REQUEST NO. 82.** Any and documents evidencing exports from each of
24 Plaintiff's manufacturing facilities where 3M brand N95 respirators were
25 manufactured for the last two years, including the destination.

RESPONSE: 3M objects to this request as irrelevant, overly broad, unduly burdensome, and19 disproportionate to the needs of the case. 3M also objects as this request seeks confidential 0 information, which 3M will not provide without a protective order. Notwithstanding the objections, 3M is willing to confer on a reasonable scope of documents. 3M will not produce its Confidential documents in the absence of a protective order with a Highly Confidential/Attorneys' eyes only provision.

MOTION TO COMPEL: See AIME's Motion as it relates to REQUEST NO. 75 above.

V. CERTIFICATION

I certify that before filing this Motion, I sent opposing counsel an email on January 18, 2021 and again on June 3, 2021 seeking to have 3M respond to AIME's First Request for Production. I then scheduled and conducted a telephone conference with opposing counsel on June 12, 2021, during which the substance of the contemplated motion and many other discovery issues were discussed thoroughly, and sought potential resolution in accordance with LCR 37(a). I then sent follow up emails to opposing counsel on June 15, 2021, and again on December 15, 2021, both times seeking to have 3M's responses, all without success.

By: *s/R. Gale Porter, Jr.*

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AIME'S AMENDED MOTION FOR AN ORDER
OVERRULING 3M'S OBJECTIONS AND
COMPELLING 3M'S RESPONSE TO AIME'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS
Case No.: 2:20-cv-01096-RAJ-42

1
2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that on March 8, 2022, I electronically filed the foregoing with the Clerk
5 of the Court using the CM/ECF system which will send notification of such filing to the
6 following:
7

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34 AIME'S AMENDED MOTION FOR AN ORDER
35 OVERRULING 3M'S OBJECTIONS AND
36 COMPELLING 3M'S RESPONSE TO AIME'S FIRST
37 REQUEST FOR PRODUCTION OF DOCUMENTS
38 Case No.: 2:20-cv-01096-RAJ -43

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2 Mark Baciak, and Michael Bingham
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AIME'S AMENDED MOTION FOR AN ORDER
OVERRULING 3M'S OBJECTIONS AND
COMPELLING 3M'S RESPONSE TO AIME'S FIRST
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Case No.: 2:20-cv-01096-RAJ -44

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